

New York State Bar Association

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[Copy of letter to the Governor and the Legislative Leaders]

I am writing to urge that as we approach the conclusion of the 2018 legislative session, you and your colleagues make every effort to reform New York's discovery law relating to criminal justice.

Litigants in civil lawsuits in New York State have the opportunity via "discovery and inspection" or "disclosure" to learn about facts and evidence that is the basis for the other side's case. As you know, under New York's criminal discovery statute, defendants are often denied similar access to comparable information. Consequently, criminal defendants routinely receive limited information which often is turned over so late that it is virtually impossible to properly investigate, to secure and use any potentially exculpatory evidence, to fairly weigh a guilty plea offer, or to develop a trial strategy. As a result, lack of discovery under current New York law prevents innocent defendants from mounting a proper defense, and delays the acceptance of a plea by defendants who are guilty.

Reform of New York's criminal discovery rules should seek to accomplish two key things:

- help defendants fairly prepare for trial; and
- encourage informed plea bargaining without needless and costly delays.

The Association is mindful of and shares concern over the safety of witnesses. But it is not reasonable for opponents of much-needed reform to argue that safety concerns should prevent the disclosure of any witness information. In that regard, we should underscore that safety concerns cannot impede defendants' constitutional right to cross-examine these witnesses in open court, during trial.

We believe that the Association's proposal, A.7292 (Lentol)/S.6848 (Avella), strikes the right balance, allowing effective provisions to protect witnesses while affording defendants the information to which they are rightly entitled.

New York's criminal discovery laws are more restrictive than most states, including all of the other states in which the 10 largest cities in the US (other than New York City) are located. In all of these other states, witness information is subject to discovery, unless a court orders otherwise, and there are no reported aberrations regarding witness security. We think it is time that New York reform its criminal discovery laws.

The Association's policy was developed by a task force composed of members who are judges, prosecutors and defense attorneys from all over the state. Before becoming policy, our proposal was vetted among our members with extensive expertise regarding the criminal justice system, as well as other aspects of the legal system.

As you and the other leaders work to conclude the 2018 session, we urge that you recognize the critical need for significantly enhancing discovery in criminal justice matters by passing the Association's bill, which would provide defendants with information that is essential to their understanding and evaluating the charges against them while protecting witnesses in those cases where it is necessary.

Now is the time for reform of New York's laws on this critically important issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sharon Stern Gerstman', written in a cursive style.

Sharon Stern Gerstman
President